

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

741

No. 9697

United States Court of Appeals

DISTRICT OF COLUMBIA

HENRY P. TAYLOR, APPELLANT

v.

UNITED STATES, APPELLEE

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA**

BRIEF ON BEHALF OF APPELLEE

GEORGE MORRIS FAY,
United States Attorney.

JOHN C. CONLIFF, Jr.,
Assistant United States Attorney.

SIDNEY S. SACHS,
Assistant United States Attorney.

JAMES C. McKAY,
Assistant United States Attorney.

**United States Court of Appeals
for the District of Columbia**

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Joseph W. Stewart
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INDEX

	Page
Counter-statement of the case.....	1
Statute.....	2
Questions presented.....	2
Summary of argument.....	3
Argument:	
I. Appellant's acts were within the scope of Section 22-1304 of the District of Columbia Code.....	4
II. The evidence established that appellant was not a police officer.....	8

CITATIONS OF AUTHORITY

<i>Brafford v. United States</i> , 259 F. 511, 513 (C. C. A. 6th 1919).....	7
<i>Elliott v. Hudspeth</i> , 110 F. (2d) 389, 390 (C. C. A. 10th 1940).....	7
✓ <i>Haggerty v. United States</i> , 5 F. (2d) 224 (C. C. A. 7th 1925).....	10
<i>Hormel v. Helvering</i> , 312 U. S. 552, 556 (1941).....	8
<i>Lamar v. United States</i> , 241 U. S. 103 (1916).....	7
<i>Scala v. United States</i> , 54 F (2d) 608 (C. C. A. 7th 1931), <i>cert den.</i> 285 U. S. 554.....	8
<i>United States v. Barnow</i> , 239 U. S. 74 (1915).....	6
<i>United States v. McNaugh</i> , 42 F. (2d) 835 (C. C. A. 2nd 1930).....	10

MISCELLANEOUS

§ 4-120 D. C. Code of 1940.....	5
§ 4-201 D. C. Code of 1940.....	5
Art. 3.32, sec. 3, United States Park Regulations.....	5
Act of April 18, 1884, c. 26, 23 Stat. 11; March 4, 1909, c. 321, § 32, 35 Stat. 1095.....	6

(I)

1917

January 1st - New Year's Day
February 1st - Valentine's Day
March 1st - St. Patrick's Day
April 1st - Good Friday
May 1st - Labor Day
June 1st - Father's Day
July 1st - Independence Day
August 1st - Back to School
September 1st - Labor Day
October 1st - Halloween
November 1st - Thanksgiving
December 1st - Christmas

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v.

UNITED STATES, APPELLEE

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA*

BRIEF ON BEHALF OF APPELLEE

COUNTERSTATEMENT OF THE CASE

On October 20, 1947, appellant, Henry P. Taylor, was tried before a jury in the court below and convicted of falsely impersonating, and attempting to exercise the duties or authority of, a police officer.

Prior to the arrest of appellant the United States Park Police had received numerous complaints which caused two United States Park Police officers to be stationed, in plain clothes, in the vicinity of Langston Golf Course on June 29, 1947 (Jt. App. p. 17).

At approximately 12:05 A. M. of that day the two officers, who were in a car, were approached by appellant who:

* * * threw his flashlight on us and told us he was an officer attached to Number 9 precinct, and we had no business there and we had better get out" (Jt. App. p. 18).

Upon being asked to show his credentials, appellant refused saying he did not have to show them (Jt. App. p. 18). At this point appellant was told he was under arrest (Jt. App. p. 18).

Appellant stated he was not going to be arrested, and that he was going to walk away. Appellant told Officer McEwen that he had better not follow him if he (Officer McEwen) knew what was good for him (Jt. App. p. 18). Appellant then placed his hand in his back pocket in a menacing manner and began to back away (Jt. App. p. 19). Believing himself to be in danger of bodily harm, Officer McEwen fired three shots into the ground thus enabling him to take appellant into custody (Jt. App. p. 19).

At no time did appellant show the arresting officers credentials to support his statement that he was a member of the Metropolitan Police (Jt. App. p. 19). Officer Wilson testified that appellant had no badge (Jt. App. p. 23). When questioned concerning his occupation, appellant stated to the police officers that he was "in charge of the golf course grounds and school grounds in that area" (Jt. App. p. 23). At the time of his arrest appellant was wearing working clothes (Jt. App. p. 23).

Appellant was found guilty and sentenced to serve a term of imprisonment of from three to twelve months (Jt. App. p. 28).

STATUTE

The statute under which appellant was tried and convicted, Act of Mar. 3, 1901, 31 Stat. 1330, c. 854 § 860; Feb. 17, 1909, 35 Stat. 623, c. 134, provides:

Whoever falsely represents himself to be a judge of the municipal court, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officer after his appointment or commission has expired or he had been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than one year nor more than three years.

QUESTIONS PRESENTED

The following questions are presented to this court for consideration.

1. Is there no protection for the public, under a statute which makes it a crime for anyone to falsely impersonate a police officer and attempt to perform the duties or exercise the authority thereof, from a person who falsely represented to others that he was a police officer and attempted by certain acts to exercise authority over them, simply because such acts would have been in excess of the powers of a duly authorized police officer?

2. By failing to raise the foregoing question in the court below has appellant waived his right to raise it in the appellate court?

3. Where it was shown in the court below that appellant flashed a light into the car of certain United States Park police officers, represented he was a Metropolitan Police Officer, and ordered the United States Park police officers to move on, and where it was also shown that appellant attempted to escape when placed under arrest, that he threatened the arresting officers with bodily harm, that he had no credentials of a police officer and that appellant upon being questioned, stated he was employed other than as a police officer, was it necessary for the Government further to show specifically by additional evidence that appellant was not in fact a police officer in order to convict appellant of falsely impersonating a police officer and attempting to perform the duties or exercise the authority thereof?

SUMMARY OF ARGUMENT

Appellant argues that since he represented himself to be a Metropolitan Police Officer and attempted to exercise authority in a U. S. Park, and since a Metropolitan Police Officer has no authority in a U. S. Park, his actions were not prohibited by § 22-1304 of the D. C. Code. Appellant is clearly wrong since Metropolitan Police Officers and U. S. Park Police Officers have concurrent jurisdiction over U. S. parks within the District of Columbia.

Appellant's contention that § 22-1304 of the D. C. Code does not apply to acts which would be beyond the powers of a duly authorized police officer is illogical and contrary to the law as established by the Supreme Court. Adherence to appellant's position would mean that the public has no protection

from persons falsely representing themselves to be officers of the law and who, by design or otherwise, commit acts which are in excess of the authority of authorized police officers. There is no doubt that appellant's acts are within the purview of the Code provision.

In any event, appellant is precluded from raising the foregoing point in the appellate court, since he failed to raise it in the court below.

Appellant's further contention that the lower court erred in refusing to direct a verdict of acquittal by reason of the fact that the Government failed to show by specific affirmative evidence that appellant was not a police officer is without merit in view of all of the facts and circumstances of this case. Appellant's contention is contrary to established authority which holds that where, as here, the evidence adduced at the trial is such as to raise a strong inference that the defendant was acting in a fraudulent manner, it is unnecessary to introduce further evidence to show specifically that such defendant was not a police officer. Further indication of appellant's guilt was evidenced in the trial court by his failure to show he was in fact a police officer. If such were the case, the fact could have been shown with little or no difficulty by appellant.

ARGUMENT

I

Appellant's acts were within the scope of Section 22-1304 of the District of Columbia Code

Appellant urges that there was insufficient evidence presented by the Government to sustain appellant's conviction. Appellant's contention is that there was no showing he performed an overt act.

Appellant's argument in support of this contention is two-fold. He first states in effect that the officers were stationed in a United States park, that the Metropolitan Police Department has no jurisdiction over such park, and accordingly, appellant's acts in shining a light in the car, falsely representing to the officers he was a member of precinct No. 9, and ordering

them to move on did not represent an attempt to perform the duties, or exercise the authority of, a Metropolitan Police officer because such officer has no authority or duties with respect to the United States parks (Br. pp. 3-4).

Appellant's contention is clearly wrong. Metropolitan police and United States park police have concurrent jurisdiction over United States parks within the District of Columbia. § 4-120¹ and § 4-201,² D. C. Code (1940).

Appellant states further that the officers were lawfully parked at the time appellant approached their car, that a police officer has no authority to order lawfully parked persons to move on, and, accordingly, appellant's acts were in excess of the lawful authority of a police officer, and did not constitute a violation of the statute. Appellant points out that there was no attempt or threat to arrest the officers (Br. pp. 3-4).

In the first place it is submitted that a police officer does have authority to order persons to move on when found parked in a United States Park shortly after midnight. United States Park Regulations, Art. 3.32, sec. 3.³ But even if there was no such authority it is apparent that appellant's further contention is not tenable.

Appellant's contention can be supported only by construing § 22-1304 in such a way as to vitiate its effectiveness to a large extent. It is common knowledge that many citizens are not aware of the exact limitations set upon the authority of the police. Appellant, in effect, contends that there is no protection under this statute from a person who falsely claims to be a police officer, and who, by design or otherwise, perpe-

¹ § 4-120 provides: "The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia."

² § 4-201 provides: "The watchmen provided by the United States Government for service in any of the public squares and reservations in the District of Columbia shall, after August 5, 1882, be known as the 'United States park police'. They shall have and perform the same powers and duties as the Metropolitan Police of the District."

³ "Night Parking. Parking of vehicles between dark and daylight in park areas where no lighting equipment is installed is prohibited."

trates or attempts to perpetrate an act which would be beyond the authority of a duly authorized police officer.

Appellant's theory is indefensible on its face. Moreover, the case of *United States v. Barnow*, 239 U. S. 74 (1915) is a complete answer thereto. In that case the Government indicted the appellee, Barnow, under Section 32 of the Criminal Code.⁴

In the lower court it was admitted "that there was not in existence such an employee or such an employment as it was alleged the defendant pretended" (239 U. S. at 76). The trial court held that "the gist of the offense is the false personation of an officer or employee of the United States, and in order to constitute such an offense there must be personation of some particular person or class of persons, since there can not be a false personation of a suppositious individual who never existed or whose class never existed" (239 U. S. at 76). The Supreme Court overruled the trial court's holding. The court said:

We think this is to read the act in too narrow a sense. Not doubting that a false personation of a particular officer or employee of the Government * * * is within the denunciation of sec. 32, we think it has a broader reach. No convincing reason is suggested for construing it more narrowly than the plain import of its language. * * * Why should it be deemed to be less an offense where the assumption or pretense is entirely false, as where the very office or employment to which the accused pretended title has no legal or actual existence? It is insisted that the words next following—"shall take upon himself to act as such or shall in such pretended

⁴ Act of April 18, 1884, c. 26, 23 Stat. 11; March 4, 1909, c. 321, § 32, 35 Stat. 1095 provides: "Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department or any officer of the Government thereof any money, paper document, or other valuable thing, shall be fined not more than \$1,000.00, or imprisoned not more than three years, or both."

character demand and obtain," etc.—indicate an intent to punish only false personation of existing officers or employees, and not a false representation as to some suppositious employment by the Government. But to "*take upon himself to act as such*" means no more than to assume to act in the pretended character. It requires something beyond the false pretense with intent to defraud; there must be some act in keeping with the pretense * * * ; but it would strain the meaning of the section to hold that the offender must act as a veritable officer of the Government would act.

* * * *

Obviously, if the statute punished the offense only when an existing office was assumed, its penalties would be avoided by the easy device of naming a nonexistent office (pp. 78-79). [Italics supplied.]

Lamar v. United States, 241 U. S. 103 (1916), is also directly in point. There the Supreme Court held that a person has violated the statutory provisions even though his acts were in excess of the authority of the impersonated officer of office. The Court ruled that the purpose of section 32 of the Criminal Code was to:

* * * prohibit and punish the falsely assuming or pretending * * * to be an officer or employee of the United States as defined in the clause and the doing in the falsely assumed character any overt act, *whether it would have been legally authorized had the assumed capacity existed or not*, to carry out the fraudulent intent (p. 114). [Italics supplied.]

See also *Brafford v. United States*, 259 F. 511, 513 (C. C. A. 6th, 1919); and *Elliott v. Hudspeth*, 110 F. (2d) 389, 390 (C. C. A. 10th, 1940).

Following the reasoning in the *Barnow* decision it is apparent that appellant's acts would have been within the purview of the Code provision even if the pretended office, as well as the pretended authority, had no existence whatever. It is not necessary for this court to go so far as that, since appellant's

acts included the false impersonation of an office having both legal and actual existence.

The same result is reached if the *Lamar* case is followed. For under that decision the fact that a metropolitan police officer cannot order a lawfully parked car to move on does not serve to exclude appellant's acts from the operation of the statute.

Accordingly, it must be concluded that appellant's acts were well within the scope of § 22-1304 of the D. C. Code.

In any event, appellant is precluded from raising this point at this stage of the proceedings, since he failed to raise it in the court below. *Hormel v. Helvering*, 312 U. S. 552, 556 (1941).

II

The evidence established that appellant was not a police officer

Appellant also contends that the trial court erred in refusing to direct a verdict of acquittal "because there was no proof that the defendant was not a police officer" (Br. p. 4).

It is submitted that a reading of the entire transcript of the proceeding in the court below implies only one reasonable conclusion, i. e., that appellant was not a metropolitan policeman.

At no time did appellant show the arresting officers any credentials, he was found not to have a badge, he attempted to escape when placed under arrest, he threatened the arresting officer with bodily harm, and, upon being questioned by one of the officers as to his occupation, he stated that he was "in charge of the golf-course grounds and school around in that area."

All of these facts, it is submitted, raise a strong inference that appellant was not a member of the police department. This evidence is strengthened by the fact that appellant at no time during the trial claimed that he was a member of the Metropolitan Police. If he were such an officer this fact could have been shown with little difficulty by appellant. It was entirely proper to permit the jury to decide from this evidence whether there had been a violation of the statute.

This analysis of the evidence finds support in *Scala v. United States*, 54 F. (2d) 608 (C. C. A. 7th 1931), cert. den. 285 U. S. 554. In that case the appellants had been convicted of violat-

ing section 32 of the Criminal Code, *supra*, p. 6. It was charged that they had falsely represented themselves to be federal prohibition agents, and, in such pretended character, had demanded and obtained money from a certain person. On appeal it was contended that the judgment below should be overruled because there had been no proof that appellants were not in fact federal officers. With this contention the court disagreed, saying:

While it must in some manner appear that the accused were not federal officers, this negative proposition is fairly inferable from character of proof much less direct and formal than might be required to affirmatively establish official capacity. *Any facts and circumstances which to the average mind would fairly tend to indicate that these men were not federal officers will be sufficient to warrant the jury in reaching such conclusion.* In our judgment the fact that when they were seized at Chicago they had then upon them no indicia of federal authority was sufficient to warrant the inference that they were not such officers; for had they been such it is reasonable to assume the search would have disclosed some indication of it, and if it may be inferred they were not federal officers when they were searched on the 9th, it is likewise inferable that they were not officers on the 5th. Indeed, it might with propriety be said the extraordinary conduct of these men were not the conduct of federal officers.

* * * * *

But even without affirmative evidence upon the negative averment of want of official capacity, we believe it would be inferable that appellants were not federal officers. In *Graves v. United States*, 150 U. S. 118, 121 * * *, it is said: "The rule even in criminal cases is that if a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it, creates the presumption that the testimony if produced, would be unfavorable. * * *"

In our judgment this situation brings the case fairly within the principle of those where the prosecution is based on nonexistence of a license, permit, or other privilege to defendant, and wherein it has been held that if no evidence thereon appears at the trial, it will be presumed that had the evidence thereon appeared it would have been unfavorable to the defendant. *Albert v. United States* (C. C. A.) 281 F. 511; *McCurry v. United States* (C. C. A.) 278 F. 934 (p. 610).

To the same effect is the ruling in *Haggerty v. United States*, 5 F. (2d) 224 (C. C. A. 7th 1925). In that case the court, in finding the evidence sufficient to show appellant was not in fact a federal officer, considered it significant that the appellant had been in business, other than as a federal officer, for the two and one-half years next preceding trial (5 F. (2d) at 225). As stated hitherto, the record reveals that the appellant in the instant case was employed other than as a police officer at the time of his arrest.

Appellant relies on *United States v. McNaugh*, 42 F. (2d) 835 (C. C. A. 2d 1930), which involved an appeal by a defendant who had been convicted of conspiracy. It was charged that appellant conspired with two codefendants (who did not appeal) to violate section 32 of the Criminal Code, *supra*, p. 6. The two codefendants were convicted of falsely impersonating federal immigration officials. They were aided in their fraudulent scheme by the appellant.

The circuit court of appeals reversed the trial court's judgment of conviction because there was no proof that appellant's codefendants were not federal officials.

In the *Scala* case the court differentiated the facts of the *McNaugh* case from the facts then before it. It pointed out that the appellant in the *McNaugh* case had not represented herself to be a federal officer, and that there was "no occasion for the court to pass upon the sufficiency of the proof to convict her codefendants" (54 F. (2d) at 610).

The instant case may be further differentiated from the *McNaugh* case. For in the *McNaugh* case there was no indication that the codefendants committed any acts which would raise an inference that those persons were not in fact federal

officers. This being so, the argument made by the Government herein could not reasonably have been made in the *McNaugh* case, and, obviously, the court could not have passed upon it. Accordingly, it is submitted that the *McNaugh* case should not control the court's decision in the instant case.

In a case such as this, where there was ample evidence to raise an inference that the defendant's actions were fraudulent and where the defendant failed to produce information which if true would have been readily accessible to him and would have resulted in his acquittal, common sense and logic would seem to dictate that the jury be permitted to determine the guilt or innocence of such defendant.

Appellant's contention is not only technical, but, as indicated, is illogical. It is difficult to conceive of a miscarriage of justice resulting from adherence to the Government's position herein. In view of all of the evidence adduced at the trial, the Government submits that there was sufficient evidence to establish that appellant was not a police officer, and it was unnecessary to introduce additional evidence to show specifically that defendant was not in fact a police officer.

CONCLUSION

The judgment of the lower court should be affirmed.

GEORGE MORRIS FAY,
United States Attorney.

JOHN C. CONLIFF, Jr.,
Assistant United States Attorney.

SIDNEY S. SACHS,
Assistant United States Attorney.

JAMES C. MCKAY,
Assistant United States Attorney.

I hereby certify this 5th day of February 1948, that I have sent a copy of the foregoing brief for appellee to Robert I. Miller, Esquire, attorney for appellant, at his address Appeals Building, Washington, D. C., by official United States Mail.

JAMES C. MCKAY,
Assistant United States Attorney.

TRANSCRIPT OF RECORD

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9697—OCTOBER TERM, 1947

HENRY P. TAYLOR, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

FILED DECEMBER 17, 1947

(13)

REPORT OF THE

COMMISSIONER OF THE

LAND OFFICE

FOR THE YEAR 1890

ALBANY, N. Y.

PRINTED BY THE STATE OF NEW YORK

1891

1 In the District Court of the United States for
the District of Columbia
(Criminal Division No. 2)

Criminal Action No. 822-47

THE UNITED STATES OF AMERICA

v.

HENRY P. TAYLOR, DEFENDANT

WASHINGTON, D. C., *Monday, October 20, 1947.*

The above-entitled matter came on for hearing before the Hon. Richmond B. Keech, Associate Justice, and a jury, at 10:20 o'clock a. m.

Appearances: On behalf of the United States of America: John Conliff, Esq., Assistant United States Attorney. On behalf of the Defendant: Robert I. Miller, Esq.

* * * * *

6 *Opening Statement of counsel for the
Government*

Mr. CONLIFF. May it please the Court, and ladies and gentlemen of the jury:

In support of the indictment charging this defendant with falsely impersonating a police officer, the Government will show you, by competent testimony, that the Park Police had several complaints——

* * * * *

7 Mr. CONLIFF (continuing.) As a result of certain complaints, Police Officer Walter McEwen, a member of the Park Police Department, and Policewoman Gertrude E. Wilson, a Park Policewoman, went to the Langston Golf Course, which is located at Benning Road and Oklahoma Avenue Northeast, on the evening of June 29, 1947, and parked in an automobile about 12:45 a. m., which would be the morning of June the 29th. The defendant approached the car in which

they were seated. He flashed a flashlight into the car. He stated that he was a police officer from No. 9 Precinct, that he was in charge of all the grounds, and that these people had no business there after 9 o'clock, and that they had to get out.

8 The police officer, Mr. McEwen, asked the defendant to show his credentials. The defendant refused to show any credentials, and the police officer, McEwen, thereupon told him that he was in fact a police officer and that the defendant was under arrest.

The defendant started to move away, and when Police Officer McEwen approached him, he reached toward his hip pocket, and Officer McEwen took out his gun and fired three shots, and the defendant surrendered and was taken in custody.

If the Government shows you that this man represented himself to be a police officer, and so acted, we will expect a proper verdict at the proper time.

Mr. MILLER. May I come to the bench?

(Thereupon, counsel approached the bench and the following proceedings were had without the hearing of those in the jury.)

Mr. MILLER. I asked Your Honor, on the opening statement of my distinguished friend—I asked Your Honor to direct a verdict of not guilty for the reason there is no overt act shown. The mere walking up—if I were to walk up to you and you and your good wife were sitting outside, and I was to say I was a policeman, get away from here—that doesn't constitute impersonating a police officer.

The COURT. If you tell them that you are a police officer, and tell them to get away?

Mr. MILLER. Yes, sir.

The COURT. I will deny it, sir.

9 (Thereupon, counsel resumed their places at the trial table, and the following proceedings were had in open court:)

Mr. MILLER. I will reserve the opening.

Thereupon WALTER R. McEWEN called as a witness by the Government, having first been duly sworn, took the stand, was examined and testified as follows:

Direct examination by Mr. CONLIFF:

Q. Your name is Walter R. McEwen?

A. Yes, sir.

* * * * *

Q. You are a member of the United States Park Police?

A. Yes, sir; I am.

Q. And how long have you been attached to the Park Police?

A. Approximately a year.

Q. Now, directing your attention to the early morning of June 29th, of this year, Officer, did you have occasion to be in the vicinity of the Langston Golf Course?

A. Yes, sir; I did. We were stationed out there in regard to numerous complaints—

Q. Just a moment. You say "We were stationed."

10 Who do you mean by "We"?

A. Private Wilson and myself.

Q. And as a result of these complaints, what time did you go to the park?

* * * * *

Mr. MILLER. To save the point, I make the same suggestion with reference to "the complaints."

The COURT. Very well.

The WITNESS. We were stationed out there from 6 until 2 p. m.

* * * * *

The WITNESS. We went out there at 6 o'clock—were stationed there from 6 o'clock to 2 p. m.

By Mr. CONLIFF:

Q. You said you went out there at 6—in the morning?

A. 6 p. m. to 2 a. m.

Q. Now, where were you stationed in the park?

A. Well, we were stationed at the golf course, and around the school there.

Q. Where?

A. All in that area, there.

Q. Were you on foot?

11 A. Well, at the first of the night we were; but later on we had a car parked out there.

Q. Were you in the car?

A. Yes, sir.

Q. And where was Policewoman Gertrude Wilson?

A. She was sitting in the car, also.

Q. Did anything unusual happen while you were seated in this car?

A. Yes, sir; it did.

Q. What time was that?

A. About 12: 05 a. m., Sunday morning, June 29th, we were approached by the defendant——

Q. Just a moment.

At this time, or about 12: 05 a. m., on Sunday morning, on June 29th, you were in this car. Were you parked at that time, or was the car moving?

A. We were parked.

Q. What portion of the park were you in?

A. Parked on the road, beside the schools. There are three schools there.

Q. Is that park in the District of Columbia?

A. Yes, sir; it is.

Q. What happened, if anything?

A. We were approached by the defendant, later identified as Henry P. Taylor, and he threw his flashlight on us and told us he was an officer attached to Number 9 Precinct, and we had no business there and we had better get out.

12 I asked him to show me his credentials, and he said "Since you are going to take that attitude, I am not going to show them to you. I don't have to, and I'm not going to."

I got out and Private Wilson got out and showed him our credentials, and told him he was under arrest. At that point Private Wilson went to get the cruiser to have——

* * * * *

The WITNESS. At that point, when we told him he was under arrest, Private Wilson went to get the cruiser to transport him to Headquarters, and he told me I wasn't going to arrest him, he was going to walk away and I had better not follow him, if I knew what was good for me, and he put his

hand back of him, in his pocket, in a menacing manner, which led me to believe he was going to attack me and——

13 Q. What did he do, if anything?

A. Backed up,—kept backing up.

Q. What did you do, then?

A. I fired three shots into the ground before I could bring him to his senses.

Q. Did you take him into custody?

A. Yes, I did.

Q. Now, were you in uniform or plain clothes, at the time?

A. In plain clothes, at the time; I had been in plain clothes most of the year.

Q. And how was your fellow officer, Miss Wilson, dressed?

A. She was in plain clothes, also.

14 Q. When you asked to see his credentials, did he say anything?

A. Yes, he told me that since I was going to take that attitude, he wasn't going to show them to me, that he didn't have to and wasn't going to.

Q. Did he, at any time, show his credentials?

A. No, sir.

Q. I believe you stated you thereupon showed him your credentials?

A. Yes, sir; I did.

Q. What credentials did you show him?

A. My badge.

Q. At the time that he stated to you that he was a police officer from Number 9 Precinct, did he indicate what his name was, or what his rank was?

A. No, sir; he did not.

Q. Was he in uniform?

A. No, sir; he wasn't.

Mr. CONLIFF. You may examine, Mr. Miller.

Cross-examination by Mr. MILLER:

Q. Have you talked the case over with the other officer in reference to what you are going to testify here this morning?

A. No, sir.

Q. Didn't discuss it?

A. We discussed it, naturally.

* * * * *

15 Q. And, you are a member of what organization?

A. U. S. Park Police.

Q. Park Police?

A. Yes, sir.

Q. Not a member of the Metropolitan Police Department?

A. No, sir.

Q. You are a member of the Park Police?

A. That is right.

Mr. MILLER. That is all.

Mr. CONLIFF. You may step down.

(The witness then left the stand.)

Mr. MILLER. May I come to the bench?

The COURT. Very well.

(Thereupon, counsel approached the bench and the following proceedings were had without the hearing of those in the jury.)

Mr. MILLER. Don't you think that is fatal—they charge the Metropolitan Police Department, and the evidence that he is not a member of the Metropolitan Police——

* * * * *

16 Suppose they charged the Pennsylvania Railroad with something, and it turns out to be the B & O.

I say that it is fatal; there can't be anything to that. His charge is Metropolitan, and it is Park Police——

The COURT. That isn't the charge. The charge is that this man represented himself to be a member of the Metropolitan Police force, not the others.

Mr. MILLER. They charge that he is a member, officer of the Metropolitan Police Department, and he is not.

Your Honor, there is nothing to this.

The COURT. I am not following you, Mr. Miller; but if I do understand you, you are——

Mr. MILLER. The indictment charges that this man is a member of the Metropolitan Police——

The COURT. Which man?

Mr. MILLER. The prosecuting witness.

The COURT. No, sir. It does not charge that, sir. If that is your ground, I will deny it.

17 Thereupon GERTRUDE E. WILSON called as a witness by the Government, having first been duly sworn, took the stand, was examined and testified as follows:

Direct examination by Mr. CONLIFF:

Q. Would you state your full name, please?

A. Gertrude E. Wilson.

Q. Are you a member of the Park Police?

A. Yes, I am.

Q. And in what capacity?

A. Policewoman.

Q. And how long have you been a member of the Park Police?

A. About three years and two months.

Q. Now, directing your attention, Officer Wilson, to the early morning of June 29th, of this year, 1947—did you have occasion to be in the vicinity of Langston Golf Course?

A. Yes.

Q. What time did you go to that golf course?

18 A. Around 6 o'clock. I think the detail called for 6 to 2 in the morning.

Q. Did you go with anyone?

A. Yes.

Q. Who?

A. Private McEwen.

Q. And what did you do after you arrived at the golf course?

A. We patrolled the golf course area, and later on, during the night, we parked in the car and on the roadway, there, in the golf course.

Q. Did anything unusual occur while you were parked in the car?

A. No, sir, not until around about 12:05 in the morning.

Q. Now, what happened around 12:05 in the morning? Where were you at that time?

A. In the car with Private McEwen.

Q. Were you in civilian dress, or did you have on——

A. Yes, civilian dress.

19 Q. How was Officer McEwen dressed?

A. In civilians.

Q. What if anything occurred around 12:05?

A. The defendant approached the car.

* * * * *

He approached the car and threw a flashlight on us and said, "I am a policeman attached to No. 9 Precinct."

Q. How was he dressed at that time, if you can tell?

A. He had on a Navy Pea Jacket, I noticed, and dark trousers and a hat and the flashlight in his hand.

After he said he was attached to No. 9 Precinct, he said that he was in charge of the golf course and the grounds around the school building, and no one was allowed to park there after 9 o'clock at night, and we would have to get out.

20 Officer McEwen asked him to show his credentials, and he replied that "I don't have to show you any and I am not going to."

At that point we got out of the car and both showed our badges and told him we were police members and he was under arrest. I left at that time to summon the cruiser.

* * * * *

Q. Did the defendant see your badge?

A. Yes, sir.

Q. Did he see Officer McEwen's badge?

A. Yes, sir.

Mr. MILLER. I object to that. How could she tell whether he did or not? That is speculative, I say. How could she see what the defendant saw?

The COURT. I understood her to testify directly, Mr. Miller, that when they, meaning she and Officer McEwen, got out of the car, they both showed their credentials; is that right, or not?

The WITNESS. That is right.

By Mr. CONLIFF:

Q. Was he facing both of you at the time?

A. Yes.

Q. How far was he from you?

21 A. About as far as from here to that part there [indicating].

Mr. CONLIFF. You may examine, Mr. Miller.

Cross-examination by Mr. MILLER:

Q. He had no badge, did he?

A. Who?

Q. The boy.

A. No, sir.

Q. Never had any police badge, never showed you any badge, did he?

* * * * *

A. No, sir, he did not.

Q. And did he tell you what he was doing, where he was working, or anything?

A. Yes, sir.

* * * * *

Q. Where did he tell you he was working?

A. In charge of the golf course grounds and school around in that area.

Q. And he was in working clothes; isn't that the truth?

A. Yes, sir.

* * * * *

23 Mr. MILLER. That is all, for that lady.

The COURT. Anything else?

Mr. CONLIFF. Nothing further; that is the Government's case.

Mr. MILLER. The same suggestion I made at the bench, I suggest the same thing, and—Your Honor overrules it?

The COURT. Very well.

Defendant's case

Mr. MILLER. Come around, please.

Thereupon JOHN P. TAYLOR the Defendant, called in his own behalf, having first been duly sworn, took the stand, was examined, and testified as follows:

Direct examination by Mr. MILLER:

Q. Mr. Taylor, be good enough, so I don't have to ask you again, and talk loud so the Justice may hear you, and these folks here [indicating the jury].

Did you go up to that car that morning, and tell those two people you were a police officer?

24 A. No, sir.

Q. What actually happened? Talk loud so they may hear you.

A. What actually happened? If I may, I would like to start with the beginning of it so they can get to understand it.

I went home——

Q. No, leave the "home" out. Tell me—I want to cut it down; I am interested in what happened the night at the car. Tell His Honor and the jury, and Mr. Conliff, what happened.

A. As I came by the car, someone says "Hey, fellow," and I stopped and looked over to the car, and at that time I couldn't see plain enough to recognize anyone in particular, so I pulled my flashlight out of my coat and shined it in the car. I recognized, or saw the two officers in there and walked over to the car and they asked me, says, "What are you doing out here this time of night, by yourself?" I says, "What am I doing out here?" I says "I am a grown man, after all. Suppose, so long as I am not bothering anybody, I should be able to go where I please."

He looked at me, and he looked me up and down, and he said, "I thought you might be one of those police officers at No. 9 we've heard so many complaints about." I said, "I could be," and I turned around and walked away from the car. He

25 said, "Wait a minute; where is your credentials?" I said "Credentials?" He said, "You haven't shown me any credentials," and at that time he stepped out of the car and drew his gun on me and he said for me to put my hands up and I said for what, I meant I hadn't done anything. He says, "Well, I am a police officer myself, and I am putting you under arrest." I said, "Under arrest for what?" I says, "I haven't done anything for you to put me under arrest for."

And at that time he told Miss Wilson to get out of the car and show her badge. She got out of the car and opened her purse and pulled the badge out. I looked at it myself. It had "U. S. Park Police" on it.

Officer McEwen never showed me a badge, or anything else.

Q. What I want to know and His Honor and the jury, is, did you tell them that you were a member of the Metropolitan Police and that you were working out of No. 9?

A. No, sir, I did not.

Mr. MILLER. That is all. Mr. Conliff will question you.

Cross-examination by Mr. CONLIFF:

Q. What time did this police officer call to you?

A. I don't know exactly what time. I didn't carry a watch, but it was somewhere around 12.

Q. What were you doing in the park that time of night?

26 A. I had went over to the drug store there at the corner of Twenty-fourth and Bennings, which usually stays open at night until about 12. Well, the drug store was closed, but down in the middle of the block there was a little delicatessen or something that stays open all night. I got a pack of cigarettes, which I came down after, and then I walked up the step, passed the Langston, I guess we call it the Apartments, and out through the park, walked around to come back down the driveway and over to the car line, which is at Oklahoma Avenue and Bennings. I went down the hill past this car, and as I passed the car, this officer says "Hey, fellow," and then I told you the rest.

Q. Where did you live, at that time?

A. 4503 Bennings, where I live now.

Q. You said you were walking along and someone called you. What did they say?

A. He says, "Hey, fellow," and I stopped and shined my flashlight over in the car, and then I——

Q. Was that a man's voice or a woman's voice that said "Hey, fellow"?

A. It was a man's voice.

Q. You testified you went over to the car and saw there were two officers there.

A. I saw there were two people there, but I didn't know whether they were officers or who they were.

27 Q. And, did you explain to them what you were doing in the park?

A. They never asked me.

Q. After you went to the precinct were you not asked what you were doing in the park, and made a statement to Officer McEwen that you had been out there a few nights before and somebody had jumped you and you were trying to find the fellow?

A. I did.

Q. Well, were you in the park looking for this fellow that jumped you a few nights before, or were you walking home after buying cigarettes?

A. I wasn't particularly looking for him. I took the walk through the park after I went and bought the cigarettes, in case I could see him or see someone out there doing the same thing that happened to me.

* * * * *

30 Mr. CONLIFF. If Your Honor please, and ladies and gentlemen of the jury, this case is a simple matter of fact, from the standpoint of the testimony and it doesn't require much argument—

Mr. MILLER (interposing.) Your Honor, could I bother you one minute again? Come to the bench, again, please, Mr. Conliff.

(Thereupon, counsel approached the bench, and the following proceedings were had without the hearing of those in the jury.)

31 Mr. MILLER. I ask Your Honor to direct a verdict of not guilty on the grounds there is no evidence in the case that the defendant is not a member of the Metropolitan Police Department.

The COURT. I will deny it, sir.

Mr. MILLER. All right, sir.

(Thereupon, counsel resumed their places at the trial table, and argument to the jury proceeded further.)

* * * * *

36 Criminal No. 822-47—Grand Jury No. 808-47

False Personation of Police Officer (22-1304
D. C. Code)

THE UNITED STATES OF AMERICA

v

HENRY P. TAYLOR

The Grand Jury charges:

On or about June 29, 1947, within the District of Columbia, Henry P. Taylor unlawfully did falsely represent himself to Walter R. McEwen, to be a police officer of the Metropolitan Police Department of the District of Columbia, and unlawfully did attempt to perform duties and exercise the authority of the said police officer of the Metropolitan Police Department of the District of Columbia.

CHARLES B. MURRAY,
*Assistant Attorney of the United States
in and for the District of Columbia.*

A true bill:

BENJAMIN R. ORR,
Foreman.

34 The Court resumes its session pursuant to adjournment: Hon. Richmond B. Keech, presiding.

Criminal No. 822-47

UNITED STATES

v.

HENRY P. TAYLOR

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, Robert I. Miller, Esquire; whereupon the jurors of the regular Petit Jury panel serving in Criminal Court No. Two being called, are sworn upon their voir dire; and thereupon comes a jury of good and lawful persons of the District of Columbia, to wit:

Charles A. Barbee
 Philip L. Butler
 Christopher Luchenburg
 Myrtle I. Pettross
 Charles B. Plummer
 Emma V. Ragan

Lee J. Richards
 Agnes L. Ronayne
 Samuel P. Stewart
 Gertrude L. Sullivan
 Barbara E. Ward
 Odonold A. Weedon

who being sworn to well and truly try the issue joined herein, upon their oath say that the defendant is guilty in manner and form as charged in the indictment; whereupon said defendant is remanded to the Washington Asylum and Jail; and thereupon the case is referred to the Probation Officer of the Court.

37 The Court resumes its session pursuant to adjournment: Hon. Richmond B. Keech, presiding.

Criminal No. 822-47

UNITED STATES

v.

HENRY P. TAYLOR

Come as well the Attorney of the United States, as defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, Robert I. Miller, Esquire; and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that, for his said offense, the said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) months to Twelve (12 months); and thereupon the Court fixes the bond in this case at Three Hundred (\$300.00) Dollars pending appeal.

